(4)

Division Bench

(5)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

W.P. NO. 2954/2005

PETITIONER : Erstwhile Mewar University

Sponsored body Mewar Education Society, Raipur

Through : Its Vice Chancellor/ Chairman

Professor Umashankar Goel

Aged about 62 years

S/o. Shri GANGA SAHAI

R/o. Sector-2, Shanker Nagar, Raipur (C.G.)

P.R. No. 2653/05 Presented by Shri [illegible] dated 17/12/05

VERSUS

RESPONDENTS : 1. State of Chhattisgarh

Through its Chief Secretary

Dau Kalyan Singh Bhawan

Raipur (C.G.)

2. Department of Higher Education (Technical Education), Jana Shakti Niyojan and Science Technology, Through : Its Additional Chief Secretary, Raipur (C.G.)

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(6)

3. All India Council for Technical Education (AICTE) Through Its Chairman, Indira Gandhi Sports Complex, I.P. Estate, New Delhi

4. Pt. Pandit Ravishankar Shukla University

Through : Its Registrar

Raipur (C.G.)

5. Guru Ghasidas Uiversity Bilaspur

Through : Its Registrar

Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS ETC AND FOR APPROPRIATE WRIT OR WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS

XI-HC—78

302

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P 2954 **सन्** 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

~~DIVISION BENCH~~:

HON'BLE SHRI A.K. PATNAIK, CJ
&HON'BLE SHRI S.K. AGNIHOTRI, J

22/07/2005:

Heard Mr. Gautam Khetrapal learned counsel for the petitioner and Mr. V.V.S.Murthy learned Dy. Advocate General with Mr. Sumesh Bajaj, learned Govt. Advocate for the State of Chhattisgarh/respondents 1 & 2.

The petitioner, the erstwhile Mewar University, was notified as University under the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 (*for short 'the Act'*). The Act was challented before the Supreme Court in the case of **Prof. Yashpal & Another Vs. State of Chhattisgarh & Others** in Writ Petition (Civil) No.19 of 2004. By the judgment dated 12th February 2005 delivered in the said writ petition, the Supreme Court declared the provisions of Sections 5 & 6 to be ultra vires and quashed the notifications issued by the State Government in the Gazette in purported exercise of the powers under Section 5 of the Act notifying Universities. In paragraph 45 of the judgment, the Supreme Court further held that in order to protect the interest of the students who may be actually studying in the institution established by such private universities, the State Government may take appropriate measures to have such institutions affiliated to the already existing State Universities in Chhattisgarh. In paragraph 46 of the said judgment, the Supreme Court further observed that steps may be taken for affiliation of the institutions established by such private universities to the already existing State Universities in accordance with the direction contained in paragraph 45 of the judgment and that the parties would be

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

at liberty to approach the High Court, if any, dispute arises in implementation of the direction.

2. Pursuant to the said directions in paragraphs 45 & 46 of the said judgment of the Supreme Court, Statute No.27(A) titled as "Admission of Interim Institutions to the privileges of the University and withdrawal thereof" has been framed and clause 5 of the said Statute No.27(A) provides as follows:

> "xxx xxx xxx, an interim institution will be admitted to the privileges of the ESU on the basis of the territorial jurisdiction of ESU for affiliation, as specified in Second Schedule of the above said Act on application of the Sponsoring Body of the Interim Institution and the same shall be withdrawn thereof in the manner in the paras mentioned hereinafter."

In the aforesaid clause 5 of the Statute No.27(A), it is provided that an interim institution will be admitted to the privileges of the ESU (Existing State Universities) on the basis of the territorial jurisdiction of ESU for affiliation. The aforesaid clause does not make any provision for admission of interim institution to the privileges of the existing State Universities if the institution is beyond the territorial jurisdiction of the existing State Universities for affiliation.

3. The petitioner has its University located at Raipur but has opened up two study centres at Ghaziabad and Chittorgarh, which are located outside the territorial jurisdiction of the State of Chhattisgarh and the said two study centres located outside the State cannot, therefore, be admitted

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मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

to the privileges of existing State Universities in the State of Chhattisgarh under the aforesaid clause 5 of the Statute No.27(A). For this reason, they have challenged the vires of the aforesaid clause 5 of the Stattute No.27(A).

4. We find that in paragraph 41 of the aforesaid judgment in the case of **Prof. Yashpal & Another Vs. State of Chhattisgarh & Others**, the Supreme Court has clearly held that in view of the provisions of Article 245(1) of the Constitution, it is only Parliament which is competent to make Laws for the whole or any part of the territory of India and the legislature of the State can make laws for the whole or any part of the State but not for any territory beyond the State and therefore the Act was beyond the legislative competence of the Chhattisgarh Legislature inasmuch as it enabled a University to have an off-campus centre outside the State.

5. In view of the aforesaid clear judgment of the Supreme Court, we cannot possibly entertain this writ petition challenging the vires of clause 5 of Statute No.27(A) which confines the admission of an interim institution to the privileges of the existing State Universities on the basis of the territorial jurisdiction of the existing State Universities for affiliation and which does not provide for admission of off-campus centres located outside the territory of the Chhattisgarh to the privileges of the existing State Universities of the State of Chhattisgarh and we accordingly, dismiss the same.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge